Matrix Fire System Sdn Bhd v Aziman Shah bin Abdul Samad

HIGH COURT (KUALA LUMPUR) — ORIGINATING MOTION NO R3–25–102–98
NIK HASHIM J
30 APRIL 1999

Labour Law *— Employment — Termination of service — Burden of proof — Whether employer discharged burden that dismissal was with just cause or excuse — Quantum of damages — Discretion of court — Whether outrageous or manifestly excessive or unreasonable*

The respondent joined the services of the applicant as a project executive. He was dismissed by the applicant after working for only two weeks. The respondent alleged that his dismissal was without just cause and excuse. The applicant on the other hand contended that the respondent had informed the applicant that the post of a project executive was not suitable for him and that he would not be able to continue employment with the applicant. The Industrial Court found that the applicant's evidence that the respondent had failed to carry out his duties and had abused his position lamentably inadequate and held that the dismissal was without just cause and excuse. The respondent was awarded compensation of RM26,000. The applicant applied for an order of certiorari to quash the Industrial Court's award. It was contended that the Industrial Court's finding that 'what is before the court are bare allegations' was without any legal basis and therefore the Industrial Court was in error of law. It was also contended that the remedy of RM26,000 was excessive and unreasonable contrary to awards made in respect of probationers on termination.

Held, dismissing the application:

(1) The Industrial Court, after a careful deliberation of both the evidence of the applicant and the respondent, had accepted the respondent's version as being more probable and made a firm finding that the applicant had failed to discharge the burden of proving that the respondent was dismissed for just cause and excuse. The Industrial Court had made findings of facts supported by evidence before the court. Any reasonable tribunal in similar circumstances would have come to a like decision on the facts before it (see p 236B–E).

(2) The quantum was not so outrageous or manifestly excessive or unreasonable that defies logic. Indeed, it was within the discretion of the Industrial Court to make the award. Since there was a legal basis for paying compensation, the question of quantum was very much a matter of discretion of the Industrial Court to fix under s 30 of the Industrial Relations Act 1967. The discretion is given to the Industrial Court and not to this court to fix the amount of compensation. The Industrial Court had determined the quantum of the award and had exercised its discretion lawfully. It

A was not the High Court's function to consider whether on the merits of the case, the award was fair and reasonable (see p 237F–G).

[Bahasa Malaysia summary

B Responden memasuki perkhidmatan-perkhidmatan pemohon sebagai eksekutif projek. Beliau telah dipecat oleh pemohon setelah bekerja untuk dua minggu sahaja. Responden mengatakan pemecatan beliau adalah tanpa sebab dan alasan yang adil. Pemohon sebaliknya menegaskan bahawa responden telah memberitahu pemohon bahawa C jawatan eksekutif projek adalah tidak sesuai untuk beliau dan bahawa beliau tidak meneruskan kerja dengan pemohon. Mahkamah Perusahaan mendapati keterangan pemohon bahawa responden gagal untuk menjalankan tanggungjawab-tanggungjawab beliau dan menyalahgunakan kedudukan beliau adalah tidak mencukupi dan memutuskan pemecatan tersebut adalah tanpa sebab dan alasan yang D adil. Responden diaward pampasan sebanyak RM26,000. Pemohon memohon untuk perintah certiorari untuk membatalkan award Mahkamah Perusahaan tersebut. Adalah ditegaskan bahawa keputusan Mahkamah Perusahaan 'apa yang ada di hadapan mahkamah adalah hanya pengataan-pengataan' adalah tanpa apa-apa dasar di sisi undang-undang dan maka Mahkamah Perusahaan telah E membuat kesilapan undang-undang. Adalah juga ditegaskan bahawa remedi sebanyak RM26,000 adalah keterlaluan dan tidak munasabah bertentangan dengan award-award yang dibuat berkenaan dengan pegawai-pegawai dalam percubaan yang ditamatkan.

F **Diputuskan**, menolak permohonan tersebut:

(1) Mahkamah Perusahaan, setelah mempertimbangkan dengan teliti kedua-dua keterangan pemohon dan responden telah menerima versi responden sebagai yang lebih mungkin dan membuat penemuan tegas bahawa pemohon telah gagal untuk melepaskan G beban untuk membuktikan bahawa responden adalah dipecat untuk sebab dan alasan yang adil. Mahkamah Perusahaan telah membuat penemuan-penemuan fakta yang disokong oleh keterangan di hadapan mahkamah. Mana-mana tribunal yang munasabah di dalam keadaan-keadaan yang serupa akan mencapai keputusan yang sama berdasarkan fakta-fakta di H hadapannya (lihat ms 236B–E).

(2) Kuantum tersebut adalah bukannya mengejutkan atau jelas keterlaluan atau tidak munasabah yang mengingkari logik. Memangnya ia adalah dalam budi bicara Mahkamah Perusahaan untuk membuat award tersebut. Memandangkan terdapatnya I dasar di sisi undang-undang untuk membayar pampasan, persoalan kuantum adalah benar-benar perkara budi bicara Mahkamah Perusahaan untuk menentukan di bawah s 30 Akta Perhubungan Perusahaan 1967. Budi bicara adalah diberikan kepada Mahkamah Perusahaan dan bukan kepada mahkamah ini

untuk menentukan jumlah pampasan. Mahkamah Perusahaan telah menetapkan kuantum award dan telah melaksanakan budi bicaranya dengan sah. Bukan fungsi Mahkamah Tinggi untuk mempertimbangkan sama ada atas merit-merit kes, award tersebut adalah adil dan munasabah (lihat ms 237F–G).]

Notes

For cases on termination of service, see 8 *Mallal's Digest* (4th Ed, 1999 Reissue) paras 943–976.

Cases referred to

Agate Duty Free Sdn Bhd v Ravindran a/l Sundram [1996] 1 ILR 1065 (refd)
Allfit Furniture Industries Sdn Bhd v Buang bin Arbain [1995] 1 ILR 223 (refd)
BC Chaturvedi v Union of India & Ors [1996] 1 LLJ 1231 (refd)
Harpers Trading (M) Sdn Bhd v National Union of Commercial Workers [1991] 1 MLJ 417 (refd)
Hotel Jaya Puri Bhd v National Union of Hotel, Bar and Restaurant Workers & Anor [1980] 1 MLJ 109 (refd)
KFC Technical Services Sdn Bhd v Industrial Court of Malaysia & Anor [1992] 1 MLJ 564 (refd)
Khaliah bte Abbas v Pesaka Capital Corp Sdn Bhd [1997] 1 MLJ 376 (refd)
Koperasi Serbaguna Pekerja Felda Bhd v Zainal Ariffin bin Mohd Noor [1994] 2 ILR 862 (refd)
Ibis Automobile Sdn Bhd v Azizan bin Hamed [1993] 1 ILR 256 (refd)
Ranbaxy (M) Sdn Bhd v Vijaya A Rajadurai Award No 116 of 1999 (refd)
Ter Ah Chai v The Times Packaging Co Sdn Bhd & Anor [1998] 4 CLJ 923 (refd)

Legislation referred to

Industrial Relations Act 1967 ss 20(3), 30

TM Varughese (*TM Varughese & Co*) for the applicant/company.
KC Wong (*P Kuppusamy & Co*) for the respondent.

Nik Hashim J:

Application

Dissatisfied with the decision of the Industrial Court, the Matrix Fire System Sdn Bhd ('the company'), applied for an order of certiorari to quash the Industrial Court's Award No 406 of 1998 dated 8 August 1998 which held that the termination of its Project Executive's (the respondent's)

services was without just cause and excuse. The Industrial Court ordered the company to pay the respondent RM26,000 as compensation for the loss of employment. The application was heard by me on 15 April 1999. After hearing the submissions of both sides, I dismissed the application with costs. I now state my reasons for so doing.

Facts of case

The respondent, aged 40 with a family, joined the services of the applicant company on 10 September 1996 as the Project Executive with a salary of RM1,600 plus RM500 for petrol and car allowance per month. On 26 September 1996, the respondent was on medical leave and he informed the company's clerk about it. On the next day, ie 27 September 1996, the respondent returned to work and handed in the medical certificate. Consequently, the respondent was called in by the company's director, COW-1 who then issued a termination letter terminating the respondent's services with the company. The letter reads:

28 September 1996

Dear En Aziman

Re: Termination of Service

As per discussion on 27 September 1996, and as agreed by you, the job of Project Executive is not suitable for you. We have no alternative but regret to terminate your services effective 27 September 1996.

Yours faithfully,
Matrix Fire Systems Sdn Bhd
(Sgd)
Alfred Lee
Director

Pursuant to representations by the respondent, his termination was referred to the Industrial Court under s 20(3) of the Industrial Relations Act 1967 ('the Act'). In the Industrial Court, the company called its director as the sole witness, COW-1, whereas the respondent testified on his own behalf. The Industrial Court did not find favour with the company and found the respondent's dismissal to be without just cause and excuse, and a sum of RM26,000 was awarded to the respondent as compensation for the loss of employment.

Statement of case

In the statement of case, the respondent states:

> (4) On 26 September 1996 the claimant (respondent) was on medical leave. ... On 27 September 1996 on returning to work the Director named Alfred Lee called the claimant (respondent) to his room and verbally informed the claimant (respondent) that, he is terminated with immediate effect. The claimant (respondent) also returned all the company's belongings on that day as requested by the company.

(5) The claimant (respondent) contends and will establish at the hearing that he was dismissed without just cause and excuse.

Statement in reply

In reply, the company while denying that the respondent was dismissed without just cause or excuse, states as follows:

(4) ... Pursuant to a meeting between the claimant (respondent) and Mr Alfred Lee from the company, the claimant (respondent) had informed Mr Alfred Lee that the post of a Project Executive is not suitable to the claimant (respondent) and that he would be unable to continue employment with the company. Nevertheless, the company has paid the claimant's (respondent's) due wages for the month of September 1996. The claimant (respondent) had left on his own.

(5) Further and in the alternative, the company avers that the claimant (respondent) had failed to carry out his post as a Project Executive at the time of his probation, pursuant to cl 1 of the letter of appointment.

(6) The claimant (respondent) had during the course of his employment loaned money from Mr Alfred Lee, the Company Director and had requested for RM400 as advance from the company. Further, the claimant (respondent) had asked for money from one of the company's sub-contractor, Mr Cheng Che Wah at the time when the claimant (respondent) was handling the said project on behalf of the company at ABC Broadcast.

(7) He had further failed to carry out his job diligently as a Project Executive in that he failed to carry through and complete projects assigned to him.

(8) The company denies paras (5) and (6) and contends that at all times, the company has never terminated and/or dismissed the claimant (respondent) directly nor constructively nor was the claimant (respondent) terminated without just cause or excuse.

The Industrial Court's award

In handing down the award, the learned chairman of the Industrial Court at pp 74–75 of the record said:

It is abundantly clear that the court is faced with diametrical versions of the events. As such it is incumbent upon the court to ascertain whether the company or the claimant (respondent) is telling the truth.

The court is inclined to believe the claimant (respondent) when he stated in his evidence that although the job was new to him he was willing to learn. He said he needed the job to support his family. It is his uncontroverted evidence that he had attended office everyday, read up books on the products, visited the sites, seen the clients and done whatever was required of him. As for his absence on 26 September 1996, his evidence that he was sick and had informed the office clerk about it is unchallenged. In any event he had produced a medical certificate the next day. In the circumstances the court is of the view the company's story that the claimant (respondent) had said that he was allergic to dust and the job was unsuitable for him is highly improbable.

A It is pertinent to note that the claimant (respondent) had only worked for fourteen (14) days. He worked half day on Saturday and his rest day was Sunday. The court opines that this period of time is insufficient for the company to gauge his performance or to assess his suitability for the post. If the company had found that his performance was unsatisfactory or his conduct improper then it should have brought this up with the claimant B (respondent) or warn him orally or in writing. This the company never did. The court finds the company's evidence that the claimant (respondent) had failed to carry out his duties and abused his position lamentably inadequate. What is before the court are bare allegations. ...

... After a careful deliberation of the evidence the court concludes that the claimant's (respondent's) version is the more probable one and decides in his C favour. In the final analysis the company has failed to discharge the burden of proving that the claimant (respondent) was dismissed for just cause and excuse.

Contentions of the applicant company

D In support of the application, Mr TM Varughese, counsel for the company argued that the finding of the Industrial Court at p 75: 'what is before the court are bare allegations' was without any legal basis and contrary to respondent's own evidence in court. Therefore the Industrial Court was in error of law which justified quashing of the award.

With regard to the remedy of RM26,000, counsel said that it was E manifestly excessive and so unreasonable contrary to consistent awards of the Industrial Court made in respect of probationers on termination. If the termination was without just cause or excuse, the Industrial Court would award the salary from the date of termination to the expiry date of probation. Counsel submitted that the most respondent could get in this case, was three months salary minus for what he had received for September F 1996, and in support of his submission, he cited three Industrial Court cases:

(i) *Allfit Furniture Industries Sdn Bhd v Buang bin Arbain* [1995] 1 ILR 223;

G (ii) *Koperasi Serbaguna Pekerja Felda Bhd v Zainal Ariffin bin Mohd Noor* [1994] 2 ILR 862; and

(iii) *Ibis Automobile Sdn Bhd v Azizan bin Hamed* [1993] 1 ILR 256.

Contentions of the respondent

H Mr KC Wong who appeared for the respondent submitted that the Industrial Court had arrived at its decision lawfully. It did not commit any error of law in arriving at its decision. The Industrial Court found that the company had failed to discharge the burden of proving that the respondent was dismissed for just cause and excuse. Respecting the remedy, counsel argued that RM26,000 is not manifestly excessive. It is within the I jurisdiction of the Industrial Court to make the award and cited *Ter Ah Chai v The Times Packaging Co Sdn Bhd & Anor* [1998] 4 CLJ 923 in support.

Court's finding

Having considered the arguments advanced by both parties and having carefully read the record, I came to the conclusion that this application must fail. The award was justified and correct in law.

The Industrial Court, after a careful deliberation of both the evidence of the company and the respondent, had accepted the respondent's version as being more probable and made a firm finding that the applicant company had failed to discharge the burden of proving that the respondent was dismissed for just cause and excuse. The learned chairman had made findings of facts supported by evidence before the court. In arriving at its conclusion, the Industrial Court had taken into consideration all relevant facts which it ought to have taken into consideration. With the available evidence the Industrial Court was right in its finding that the company's evidence that the respondent had failed to carry out his duties and abused his position lamentably inadequate. In his testimony, the respondent said he had borrowed RM10 from the contractor to buy petrol for his car since he was short of cash on that day. Apart from this, there was no other evidence to show that the respondent had asked the contractor for money. The applicant company, however, did not call the contractor as a witness. Neither, there was any explanation for his absence. Thus, the Industrial Court's finding that 'what was before the court was merely the bare allegation made by COW-1' was justified in the circumstances. The finding was based on the evidence before the Industrial Court. Any reasonable tribunal similarly circumstanced would have come to a like decision on the facts before it. The High Court in its power of judicial review does not act as appellate authority to reappreciate the evidence and to arrive at its own independent findings on the evidence. Adequacy of evidence or reliability of evidence cannot be permitted to be canvassed before this court (see *BC Chaturvedi v Union of India & Ors* [1996] 1 LLJ 1231 at p 1235 (SC)).

With regard to the award of RM26,000 as compensation, I ruled that it was made with legal basis. The learned chairman had concluded that the respondent's dismissal was without just cause and excuse. On this legal basis the learned chairman made the order of compensation. In respect of the quantum the Industrial Court was mindful of the view taken by the Federal Court in *Hotel Jaya Puri Bhd v National Union of Hotel, Bar and Restaurant Workers & Anor* [1980] 1 MLJ 109 which at pp 112–113 held that:

> ... If there is a legal basis for paying the compensation, the question of amount of course is very much a matter of the discretion which the Industrial Court is fully empowered under s 30 of the Industrial Relations Act to fix, ...

In *Hotel Jaya Puri*, the Industrial Court had ordered the amount of compensation to be two months' salary for each year of service, but the Federal Court quashed this order because there was no basis to order compensation. This is because the Federal Court had found that the termination of services of the employees was with just cause or excuse.

In *KFC Technical Services Sdn Bhd v Industrial Court of Malaysia & Anor* [1992] 1 MLJ 564, Eusoff Chin J (now the Chief Justice of the Federal Court) held that the amount of compensation of two months' salary for each year of service, which the Industrial Court described as punitive compensation, was justified.

It is trite that a probationer enjoys the same rights as a permanent or confirmed employee and his services cannot be terminated without just cause or excuse (*Khaliah bte Abbas v Pesaka Capital Corp Sdn Bhd* [1997] 1 MLJ 376). As adverted to earlier, the amount of compensation is a matter of discretion of the Industrial Court to fix and in my view, it need not necessarily be restricted to probationary period on termination. The three Industrial Court cases cited earlier by learned counsel for the company are distinguishable on facts and therefore not applicable to the present case. In *Agate Duty Free Sdn Bhd v Ravindran a/l Sundram* [1996] 1 ILR 1065, the Industrial Court awarded full backwages of RM24,000 for 24 months to a probationer who had only worked for five months out of a period of six months probation. Whereas in *US Feed Grains Council v Chuah Chong Tit* [1997]1 ILR 720, a probationer who had served for three months out of six months probation, was awarded 22 months backwages of RM93,500. In *Ranbaxy (M) Sdn Bhd v Vijaya A Rajadurai* Award No 116 of 1999, the Industrial Court ordered full 24 months backwages of RM81,600 to a probationer who had only worked for four and a half months. He was on unlimited probationary period.

In the present case, the respondent was on probation for a period of three months and he was working for only two weeks when he was dismissed. And he was awarded RM26,000 for the loss of employment. The amount awarded is equivalent to 16 months of his salary. To my mind, the quantum is not so outrageous or manifestly excessive or unreasonable that defies logic. Indeed, it is within the discretion of the Industrial Court to make the award. Since there is a legal basis for paying compensation, the question of quantum is very much a matter of discretion of the learned Chairman of the Industrial Court to fix under s 30 of the Act. The discretion is given to the Industrial Court and not to this court to fix the amount of compensation. The learned chairman had determined the quantum of the award and in my view, she had exercised her discretion lawfully. It is not the High Court's function to consider whether on the merits of the case, the award was fair and reasonable (see *Harpers Trading (M) Sdn Bhd v National Union of Commercial Workers* [1991] 1 MLJ 417).

In this case, the Industrial Court had heard the evidence from both sides and it came to a decision that the applicant company had failed to discharge the burden of proving that the respondent was dismissed for just cause and excuse, and accordingly, awarded RM26,000 compensation to the respondent. In my view, the award was justified and correct in law. The Industrial Court had not committed any error of law in making the impugned award. It had not exceeded its jurisdiction.

Thus, there is no reason for this court to interfere with the Industrial Court's decision. Therefore, the application for an order of certiorari was dismissed with costs.

Application dismissed.

Reported by Jafisah Jaafar